

(23)

Court, U. S.  
FILED  
1944  
CLERK

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1943

No. **947**

ARCHIE C. DAVIS,

Petitioner,

—against—

SHELL UNION OIL CORPORATION,  
ASIATIC PETROLEUM CORPORATION,

Defendants,

—and—

COMPANIA de PETROLEO SHELL de COLOMBIA;  
N. V. KONINKLIJKE NEDERLANDSCHE MAATSCHAPPIJ TOT  
EXPLOITATIE VAN PETROLEUMBRONNEN IN NEDERLANDSCHE-  
INDIE (ROYAL DUTCH COMPANY FOR THE WORKING OF PETRO-  
LEUM WELLS IN THE NETHERLANDS INDIES);  
THE SHELL TRANSPORT & TRADING COMPANY, LTD.;  
N. V. de BATAAFSCHE PETROLEUM MAATSCHAPPIJ (THE  
BATAVIAN PETROLEUM COMPANY);  
THE ANGLO-SAXON PETROLEUM COMPANY, LTD.; and  
ASIATIC PETROLEUM COMPANY, LTD.,

Respondents.

**PETITION AND BRIEF IN SUPPORT OF PETITION  
FOR WRIT OF CERTIORARI TO THE UNITED STATES  
CIRCUIT COURT OF APPEALS FOR THE  
SECOND CIRCUIT**

SAMUEL B. STEWART, Jr.,  
20 Exchange Place,  
and  
GEORGE C. DIX,  
60 Wall Street,  
New York City,  
Counsel for Petitioner.



## SUBJECT INDEX

### PETITION

	PAGE
Summary Statement of the Matter Involved .....	2
Jurisdictional Statement .....	3
The Question Presented .....	4
Reasons Relied on for Allowance of the Writ.....	4

### BRIEF

Opinions of Courts Below.....	6
Jurisdiction of This Court.....	7
Statement of the Case.....	7
Specification of Errors.....	8

### ARGUMENT

#### Point I.

Section 128 of the Judicial Code (28 U. S. C. §225) does not call for the narrow interpretation of the requirement of finality placed upon it by the Second Circuit Court of Appeals, and that Court's ruling herein is inconsistent with the intent of the statute..... 8

#### Point II.

The District Court judgment, which has finally determined a controversy distinct from the general subject-matter of the litigation and as between all the parties to such controversy, is final and appealable..... 12

Point III.

The cases relied upon by the Circuit Court of Appeals below are not applicable to this case .....	14
---	----

Point IV.

The existing conflict among the decisions of the Circuit Courts of Appeals should be resolved by this Court in accordance with the principles announced in <i>Reeves v. Beardall</i> ..	16
Conclusion .....	18
Appendix—Statute Cited .....	19

TABLE OF CASES CITED

Atwater v. North American Coal Corp., 111 F. (2d) 125 .....	14, 18
Clark v. Williard, 292 U. S. 112.....	4, 11, 12
Cobbledick v. United States, 309 U. S. 323.....	9
Collins v. Metro-Goldwyn Pictures Corp., 106 F. (2d) 83 .....	17
Curtis v. Connly, 264 Fed. 650, aff'd. 257 U. S. 260 ..	15
Heike v. United States, 217 U. S. 423.....	9
Hill v. Chicago & Evanston Railroad Co., 140 U. S. 52 .....	4, 12, 14
Hohorst v. Hamburg-American Packet Co., 148 U. S. 262 .....	10, 11, 14, 15, 18
Lamb v. Cramer, 285 U. S. 217.....	11

### iii.

	PAGE
Moss v. Kansas City Life Ins. Co., 96 F. (2d) 108..	4, 16
Reeves v. Beardall, 316 U. S. 283.....	4, 11, 17
Rosenberg Co. v. Curtis Brown Co., 260 U. S. 516....	17
Thompson v. Murphy, 93 F. (2d) 38.....	4, 16
United States v. River Rouge Improvement Co., 269 U. S. 411 .....	4, 12, 13
United States v. 243.22 Acres of Land, 129 F. (2d) 678	17
Wilson v. Republic Iron & Steel Co., 257 U. S. 92..	11

#### STATUTES CITED

Judicial Code, Section 128 (28 U. S. C. §225) ....	3, 4, 8, 19
Judicial Code, Section 240(a) (28 U. S. C. §347) ..	3, 7

#### COURT RULE CITED

Supreme Court Rule 38, par. 5(b) .....	3, 7
--	------

#### TEXTBOOK AND LAW REVIEW ARTICLES CITED

Crick, The Final Judgment as a Basis for Appeal, 41 Yale L. J. 539.....	8
3 Moore's Federal Practice, pp. 3391-2; 1942 Supp., pp. 123-133.....	8, 9, 17
Note, 49 Yale L. J. 1476.....	8, 17



# Supreme Court of the United States

OCTOBER TERM, 1943

---

No.

---

---

ARCHIE C. DAVIS,

Petitioner,

—against—

SHELL UNION OIL CORPORATION,  
ASIATIC PETROLEUM CORPORATION,

Defendants,

—and—

COMPANIA de PETROLEO SHELL de COLOMBIA;

N. V. KONINKLIJKE NEDERLANDSCHE MAATSCHAPPIJ TOT  
EXPLOITATIE VAN PETROLEUMBRONNEN IN NEDER-  
LANDSCHE-INDIE (ROYAL DUTCH COMPANY FOR THE  
WORKING OF PETROLEUM WELLS IN THE NETHERLANDS  
INDIES);

THE SHELL TRANSPORT & TRADING COMPANY, LTD.;

N. V. de BATAAFSCHE PETROLEUM MAATSCHAPPIJ (THE  
BATAVIAN PETROLEUM COMPANY);

THE ANGLO-SAXON PETROLEUM COMPANY, LTD.; and  
ASIATIC PETROLEUM COMPANY, LTD.,

Respondents.

---

## **PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT**

*To the Honorable, The Chief Justice of the United States  
and Associate Justices of the Supreme Court of the  
United States:*

The petition of Archie C. Davis respectfully shows to this  
Honorable Court:

*Summary Statement of the Matter Involved.*

The petitioner brought this action at law in the United States District Court for the Eastern District of New York against the six respondents herein and the two other defendant corporations, Shell Union Oil Corporation and Asiatic Petroleum Corporation, for \$380,000. damages on one cause of action for breach of contract, and for \$25,000. damages on a second cause of action based upon misrepresentation. The two formal agreements upon which the action is based, copies of which are annexed to the complaint (R. 12-18 and 20-22), were executed in New York City by respondent Shell Colombia. That respondent is alleged to have executed these two contracts both on its own behalf and as the agent and instrumentality of each of the seven other defendants, each of which participated in the negotiations leading up to the execution thereof (R. 8).

Shell Union Oil Corporation and Asiatic Petroleum Corporation, both Delaware corporations, admittedly doing business in New York, appeared and answered. The remaining six defendants, the respondents herein, joined in a motion to vacate the service of process upon them on the grounds (1) that the Court had no jurisdiction over their persons, and (2) that the individuals upon whom process was served were not agents upon whom service could validly be made. The District Court (Abruzzo, J.) granted the motion and wrote a lengthy opinion (R. 34-49), and on November 20, 1943 an order and judgment (R. 22-24) was entered vacating the service of the summons and complaint upon the respondents and dismissing the action as to them for lack of jurisdiction over their persons.

An appeal was taken (R. 25-26) by the petitioner from the said order and judgment to the United States Circuit Court of Appeals for the Second Circuit, and the respondents moved to dismiss the said appeal (R. 1-2) upon the



ground that the decision of the District Court is not a final appealable decision within the meaning of the Judicial Code, Section 128 (28 U. S. C. §225). On February 11, 1944, the Circuit Court of Appeals (Swan, Chase and Clark, *JJ.*) rendered a decision upon this motion as follows (R. 26) :

“Motion to dismiss granted on authority *Hohorst v. Hamburg Am. Packet*, 148 U. S. 262; *Atwater v. No. Am. Coal Corp.*, 111 F. (2d) 125 (C. C. A. 2).”

An order of the said Circuit Court of Appeals, dated March 2, 1944 (R. 49), was filed that day, dismissing the petitioner's said appeal. This petition is for writ of certiorari to review that order.

#### ***Jurisdictional Statement.***

Jurisdiction is conferred upon this Court to review the order of the Circuit Court of Appeals, by Section 240 (a) of the Judicial Code (28 U. S. C. §347).

The said order has denied petitioner the right to appeal from the District Court judgment finally dismissing the action against all but two of eight defendants on the ground it lacked jurisdiction over their persons. This decision involves a substantial question, and is in conflict with the decisions of another Circuit Court of Appeals on the same matter, and is also probably in conflict with applicable decisions of this Court. Moreover, the decision cannot be reconciled with the accepted and usual course of judicial proceedings and therefore calls for an exercise by this Court of its power of supervision (Supreme Court Rule 38, par. 5 [b]).

### *The Question Presented.*

The question presented to this Court is whether an order and judgment of the District Court, which finally dismissed this action against six of the eight defendants (the only six defendants who had made jurisdictional objections) on the ground that the Court lacked jurisdiction of their respective persons, and thereby finally determined a controversy between the plaintiff and the said defendants which was wholly separate and apart from the causes of action asserted against the two remaining defendants, is final and appealable within the meaning of Section 128 of the Judicial Code (28 U. S. C. §225).

### *Reasons Relied on for Allowance of the Writ.*

1. The decision of the Circuit Court of Appeals for the Second Circuit is probably in conflict with the following applicable decisions of this Court:

*Hill v. Chicago & Evanston Railroad Co.*, 140 U. S. 52;

*Clark v. Williard*, 292 U. S. 112;

*United States v. River Rouge Improvement Co.*,  
269 U. S. 411;

*Reeves v. Beardall*, 316 U. S. 283.

2. The decision of the Circuit Court of Appeals for the Second Circuit is in conflict with the following decisions of another Circuit Court of Appeals on the same matter:

*Thompson v. Murphy*, 93 F. (2d) 38 (C. C. A. 8th,  
1937);

*Moss v. Kansas City Life Insurance Co.*, 96 F. (2d)  
108 (C. C. A. 8th, 1938).

3. If this Court should conclude that the decision of the Circuit Court of Appeals for the Second Circuit does not

conflict with the decisions of this Court cited in paragraph 1 above, then the order of which review is sought herein constitutes a decision of an important question of federal appellate jurisdiction which has not been, but should be, settled by this Court.

4. The Circuit Court of Appeals for the Second Circuit has decided an important question of federal law regarding its appellate jurisdiction in a manner which has so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's power of supervision.

5. The Circuit Court of Appeals for the Second Circuit has so strictly construed the extent of the appealability of orders of the District Court as to violate the purpose of appellate courts and the intent of the statute governing the same, and to deprive the petitioner of a review of an order of the District Court which involves a very substantial right.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari issue under the seal of this Honorable Court, directed to the Circuit Court of Appeals for the Second Circuit, commanding that Court to certify and to send to this Honorable Court for its review and determination, on a day certain to be therein named, a transcript of the record and proceedings herein; and that the judgment of the Circuit Court of Appeals for the Second Circuit be reversed by this Honorable Court, and your petitioner have such other and further relief in the premises as to this Honorable Court may seem just and proper.

Dated: April 24, 1944.

SAMUEL B. STEWART, JR.,  
GEORGE C. DIX,  
Counsel for Petitioner.